

**United States Department of Labor
Employees' Compensation Appeals Board**

LAURENCE D. WILKINS, Appellant

and

**U.S. POSTAL SERVICE, WORLDWAY
AIRMAIL CENTER, Los Angeles, CA, Employer**

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**Docket No. 04-59
Issued: March 9, 2004**

Appearances:
Laurence D. Wilkins, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 6, 2003 appellant filed a timely appeal from the September 11, 2003 decision of the Office of Workers' Compensation Programs, which denied his claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On May 23, 2002 appellant, then a 54-year-old postal police officer, filed a claim for traumatic injury alleging that he sustained an aggravation of his preexisting post-traumatic stress disorder and hypertension due to an altercation with his supervisor on May 22, 2002. Appellant stopped work on May 22, 2002 and did not return. He subsequently retired from the employing establishment effective January 3, 2003.

In narrative statements dated May 27¹ and July 1, 2002² appellant asserted that May 22, 2002 started out as a good day, with no problems on the job or with his health. Appellant explained that he has had hypertension since 1992 and also has a 30 percent service-connected disability for post-traumatic stress disorder, but on May 22, 2002 he had taken his medication prior to starting work and was doing well, having not had a problem with his blood pressure for over a month. However, on that date, after completing his assignment at post #2, the dock area, he was on his way to his next assignment at the airport station when he received a radio call from his supervisor, Manjit S. Gill, asking for his current location. Appellant stated that he told Mr. Gill that he was on his way to his next post, but Mr. Gill ordered appellant to come to his office instead. He stated that Mr. Gill asked him why he had not relieved Officer Peery at post #2, and appellant stated that he explained to Mr. Gill that Officer Peery had already left the post and was in the lunch room at the time he arrived. Appellant stated that Mr. Gill again asked him where he had been, to which he responded that he had been on his assignment from 5:20 p.m., following his lunch break, until 6:00 p.m. when it was time for post rotation, which was what he was doing when he received Mr. Gill's call. Appellant asserted that Mr. Gill stated that he had tried to contact appellant on the radio, but had received no response. Appellant stated that he explained to Mr. Gill that, because his vehicle radio was turned off while he was at post #2, and his handheld radio, like all the other employing establishment radios, was not working properly, he did not hear Mr. Gill's call until he was back in his vehicle on his way to his next post. Appellant asserted that, at this point, for no reason, Mr. Gill became very irate, repeating the same questions over and over. Appellant stated that, when he told Mr. Gill he had nothing further to add, Mr. Gill took out his notebook and hit it on the desk, stating: "I [a]m going to document everything that you do and get you!" Appellant stated that, at that time, he told Mr. Gill that, if there was nothing else, he was going home sick, to which Mr. Gill responded "good," and he turned in his gear and clocked out. Appellant explained that Mr. Gill's threats, intimidation tactics, harassment and false accusations aggravated his preexisting hypertension and post-traumatic stress disorder to the point where he had to go to the emergency room for treatment. He asserted that he was treated at the emergency room for almost two and one-half hours before his blood pressure was low enough for him to safely leave the hospital. Appellant stated that he received additional medical treatment on May 23, 2002 and on several occasions since and has been unable to return to work.

In support of his claim, appellant submitted statements from coworkers, Adrienne Clayton, Joyce Jones and Phyllis Easter, each of whom stated that the employing establishment's radios frequently malfunctioned and that management was well aware of this problem.

In further support of his claim, appellant submitted a May 22, 2002 treatment note written by a Health Care Partners Medical Group physician, noting that appellant presented at the hospital following a stressful encounter with his supervisor and was diagnosed with anxiety and

¹ The Board notes that, in his narrative statement, appellant also noted that, in 1985, the employing establishment committed an unjustified personnel action against him when it removed him from employment. Appellant stated that this action was reversed on appeal in 1987 and he was returned to work with back pay and benefits. However, appellant does not appear to be raising this 1985 incident as a basis for his current claim.

² The July 1, 2002 statement was submitted in response to the Office's June 28, 2002, request for additional medical and factual evidence.

hypertension. Appellant also submitted medical reports and progress notes from his treating physicians and therapists, including a report dated June 13, 2002 from Dr. Oscar Moore, Jr., his treating internist, stating that appellant was totally disabled due to his existing post-traumatic stress disorder and hypertension, which had been aggravated by work environment stress on May 22, 2002.

The employing establishment submitted several statements controverting appellant's claim. In a narrative statement dated June 3, 2002, appellant's supervisor, Mr. Gill, stated that, at 5:45 p.m. on Wednesday, May 22, 2002, after attempting to contact appellant several times by radio and receiving no response, he instructed a coworker to continue to try to raise appellant on the radio while he drove over to post #2 where appellant was supposed to be stationed. He explained that he blew his vehicle air-horn and drove into the dock area looking for appellant, but could not find him anywhere around the facility or nearby building. At 5:57 p.m., as he was driving back towards his office, he observed appellant driving by and heard him call over the radio that he was en route to the airport station for his post rotation. Mr. Gill stated that he then radioed appellant and asked him to come to his office for a meeting. When questioned, appellant maintained that he had been at his assigned post and stated that it was too noisy there for him to have heard Mr. Gill's horn. Mr. Gill stated that, while appellant further maintained that his radio might not have been working properly, when it was checked later, it was working fine. Mr. Gill stated that he explained to appellant that, if he continued to abandon his post, he would be reassigned to an area with closer supervision. He further advised appellant that he was recording the conversation as an official discussion and told him he could report back to his assigned post. Mr. Gill asserted that the discussion lasted about seven minutes and was conducted in a calm and professional manner, during which his voice remained normal in tone and he used no threatening words, gestures or body language. He stated that, afterwards, when he attempted to find appellant, he discovered he had clocked out and gone home. Mr. Gill stated that appellant did not inform him of his intentions to leave duty and had not completed any forms requesting leave for the rest of his shift. Mr. Gill stated that appellant had previously abandoned his post on January 3 and May 15, 2002, and had been counseled, at least twice, about the importance of staying at his assigned post.

In a decision dated August 9, 2002, the Office denied appellant's claim on the grounds that he failed to establish any compensable factors of employment.

Appellant requested an oral hearing, which was held on March 13, 2003. At the hearing, appellant reiterated the events described in his written statements and identified several other events, which he asserted had also aggravated and progressively worsened his condition.³ The hearing representative explained to appellant that his instant claim was one for a traumatic injury pertaining to the events of May 22, 2003 and that he could file an additional occupational disease

³ Appellant again noted that he had been improperly removed from employment in 1985, and subsequently reinstated on appeal. In addition, in 1997 he had filed an Equal Employment Opportunity (EEO) claim against another supervisor, which resulted in him receiving a formal apology from management. Appellant further asserted that in the year leading up to the May 22, 2002 incident he had been required to make an on the job arrest using force, he had been threatened by another employee and he had to testify at two hearings.

claim if he wished. Appellant indicated that he would confine his claim to the May 22, 2002 incident. Appellant also stated that, with respect to the May 22, 2002 incident, he had filed a grievance, which had been denied, and had filed an EEO claim, which was still pending.

In a decision dated September 11, 2003, the Office hearing representative affirmed the Office's prior decision finding that appellant had not established any compensable factors of employment and, therefore, had not established that he sustained an emotional condition in the performance of duty.

LEGAL PRECEDENT

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.⁵ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.⁶

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁷ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁸

⁴ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Id.*

⁸ *Id.*

ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of an altercation with his supervisor, Mr. Gill, on May 22, 2002. By decisions dated August 9, 2002 and September 11, 2003, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether the alleged incident is a covered employment factor under the terms of the Act.

Regarding appellant's allegations that Mr. Gill called him into his office and falsely accused him of abandoning his post, the Board notes that, while the monitoring of activities at work is generally related to employment, it is an administrative function of the employer and not related to the duties of the employee.⁹ Similarly, the review of an employee's work performance and the giving of oral reprimands are administrative matters and, therefore, are not generally considered to be compensable factors of employment.¹⁰ Reactions to disciplinary matters such as reprimands and inquiries regarding conduct pertain to actions taken in an administrative capacity and are not compensable unless the record demonstrates that the employing establishment erred or acted abusively in such capacity. To the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in an administrative action, such action will be considered a compensable employment factor.¹¹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹²

In this case, appellant has not shown that Mr. Gill acted in an abusive or erroneous manner. Appellant asserted that Mr. Gill falsely accused him of abandoning his post and stated that the reason he did not answer Mr. Gill's calls was because his radio malfunctioned. While appellant provided several witness statements, which support his assertion that the employing establishment's radios sometimes malfunctioned, a radio malfunction does not explain why Mr. Gill could not find appellant when he drove over to appellant's post. Therefore, Mr. Gill appears to have acted reasonably in questioning appellant's whereabouts. Thus, appellant has not established any error abuse in the administrative monitoring of his activities by Mr. Gill. In addition, while appellant asserted that, during their meeting, Mr. Gill threatened and intimidated him, Mr. Gill has denied this allegation, asserting that he kept his tone, body language and

⁹ *Brian H. Derrick*, 51 ECAB 417 (2000).

¹⁰ *Sherry L. McFall*, 51 ECAB 436 (2000); *Carolyn S. Philpott*, 51 ECAB 175 (1999).

¹¹ *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000); *James P. Guinan*, 51 ECAB 604 (2000).

¹² *Brian H. Derrick*, *supra* note 9.

gestures calm and normal and appellant has not provided any corroborative evidence to establish that Mr. Gill acted otherwise.¹³

Appellant also asserted that, in reprimanding him for leaving his post, Mr. Gill treated him unfairly in that three other coworkers were allowed to leave their posts in order to play cards with their supervisors or to pick up lunch for themselves and their supervisors.¹⁴ To the extent that certain actions and incidents alleged as constituting disparate treatment by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹⁵ However, for discrimination to give rise to a compensable disability under the Act, there must be evidence that the discrimination did in fact occur. Mere perceptions of discrimination are not compensable under the Act.¹⁶ In this case, appellant did not provide corroborative evidence in support of his assertion that these three employee's were treated differently from himself. While he provided the employee's names, he did not provide any description of the nature of their positions with the employing establishment, state when these events are alleged to have occurred or state whether these individuals were also supervised by Mr. Gill. Therefore, as Mr. Gill stated that he had counseled appellant on at least two prior occasions regarding the importance of a postal police officer staying at his assigned post, thus providing a valid reason for calling a meeting with appellant on May 22, 2002 appellant has not established that he was the subject of disparate treatment on May 22, 2002.

CONCLUSION

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.¹⁷

¹³ The Board has recognized that verbal abuse or threats of physical violence in the workplace are compensable under certain circumstances. This, however, does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under the Act. *Fred Faber*, 52 ECAB 107, 109 (2000). Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment. *Marguerite J. Toland*, 52 ECAB 294, 298 (2001).

¹⁴ Appellant raised this allegation as part of his EEO claim regarding the May 22, 2002 incident. At the time of the Office's September 11, 2003 denial of benefits, no decision had been issued by the EEO Commission.

¹⁵ *Sherry L. McFall*, *supra* note 10.

¹⁶ *James P. Guinan*, *supra* note 11.

¹⁷ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Garry M. Carlo*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member